IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

OP.No. 21857 of 1999(B)

PETITIONER:

SMT.SATHI DEVI,
DEVI NILAYAM,
AROOR P.O., ALLEPPEY DIST.

BY ADV. SRI.K.G.UNNIKRISHNAN NAIR

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
ALLEPPEY.

2. THE DEPUTY TAHSILDAR(RR),
TALUK OFFICE, CHERTHALA,
ALLEPPEY DIST.

3. THE GENERAL MANAGER,
DISTRICT INDUSTRIES OFFICE
ALLEPPEY.

4. STATE OF KERALA, NOTICE FOR
WHOM MAY BE SERVED ON THE CHIEF
SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.V.TEKCHAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.35957/1999IN O.P. NO.21857/1999

DISMISSED:

12.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF MORTGAGE DEED DT.11.10.1984.

P2: TRUE COPY OF JUDGMENT IN O.P. NOS.15566/97, 4700/1998.

P3: TRUE COPY OF NOTICE DT.3.7.99 ISSUED BY R2.

P4: TRUE COPY OF THE REPLY DT.3.8.99 FROM R4.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.21857 of 1999

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Dated this the 12th day of November, 2007.

JUDGMENT

The O.P. is filed by wife of the deceased defaulter challenging recovery proceedings for recovery of arrears of loan taken from KFC and margin money loan availed from the Industrial Department of the State Government. It is seen that loan was granted in 1984. Revenue recovery proceedings were initiated on account of default in payment. Loan is covered by mortgage executed by defaulter along with petitioner who is defaulter's wife. The O.P. was filed in 1999 and this court has not granted any stay so far. In the normal course recovery should have been continued and the O.P. itself may be infructuous. In any case on going through the grounds raised in the O.P., I do not think petitioner is entitled to any relief because debt is admitted and loan is covered by mortgage of property. The petitioner being a co-mortgagor cannot question the terms of the mortgage deed executed by her along with her deceased husband. Therefore, recovery can be continued against the properties of the defaulter and in terms of the mortgage against the petitioner also. However, if liability is not settled, I feel petitioner can be granted waiver of penal and default

interest provided the arrears are paid with contract rate of interest within a reasonable time. If required the petitioner is also free to arrange for sale of mortgaged property for settling liability. However, sale deed will be executed only after clearing the liability. If petitioner undertakes to settle liability by herself as above within two weeks from today, there will be direction to respondents 1 and 2 to grant two months time for settling liability. However, if petitioner does not furnish undertaking within two weeks from now, respondents are free to proceed with sale of the property and other recovery steps for recovery of arrears.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms